



U.S. Department
of Transportation

**Federal Railroad
Administration**

Memorandum

Date: February 3, 2004

Reply to Attn of: OP-04-02

Subject: Deadheading Following Urine Collections; Hours of Service Implications

From: Edward W. Pritchard
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To: Regional Administrators

An hours of service interpretation regarding deadhead transportation following FRA random drug testing was prepared by Grady Cothen, FRA Office of Chief Counsel. The following situation had been posed with respect to its hours of service implications:

Crewmembers are transported to a collection facility for random drug testing. Collections and paperwork are completed within the hours of service, but the 12-hour period expires as the employees are departing via carrier-provided transportation for their point of final release. At the point of final release, the employees perform no duties (but may mark-off in whatever customary manner is provided) and are promptly released.

The issue presented is how the travel time should be treated for Hours of Service Act purposes. Is it other service for the railroad that must be commingled, resulting in a violation of the law; or is it deadheading that should be treated as "limbo time"?

Section 1 of the Act (45 U.S.C. 61) provides that "[t]ime on duty shall commence when an employee reports for duty and terminates when the employee is finally released from duty and shall include [certain specified items and] time spent in deadhead transportation to a duty assignment: Provided, that time spent in deadhead transportation by an employee from duty to his point of final release shall not be counted in computing time off-duty....(emphasis added)."

(Transportation from a duty assignment to final release is not identified as on-duty time). Section 2 of the Act provides that "[i]n determining . . . the number of hours an employee is on duty, there shall be counted, in addition to the time such employee is actually engaged in or connected with the movement of any train, all time on duty in other service performed for the railroad during the twenty-four hour period involved."

These provisions have been construed to mean that deadhead transportation from a place where duty is performed to the place of final release is neither time on duty nor time off duty. No distinction has previously been made with respect to the character of the service last performed. That is, travel back to the point of final release has been treated as deadheading whether the last service performed was movement of a train or non-covered service such as safety training, required attendance at an investigation, etc.

It is the Office of Chief Counsel's opinion that travel from a collection site back to the point of final release is not distinguishable from other situations involving deadhead transportation at the end of the duty tour. The period is therefore "limbo" time, and no violation is incurred if employees are promptly released at the destination and the required off-duty period is thereafter provided.

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